



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

BLUE RIDGE REGIONAL OFFICE

901 Russell Drive, Salem, Virginia 24153

(540) 562-6700 FAX (804) 698-4178

www.deq.virginia.gov

Andrew R. Wheeler
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4000

Robert J. Weld
Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO**

**MOORE'S ELECTRICAL & MECHANICAL CONSTRUCTION, INC.
EPA ID No. VAR000535609**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Moore's Electrical & Mechanical Construction, Inc. for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Salem, Virginia.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

Consent Order

Moore's Electrical & Mechanical Construction, Inc.; EPA ID No. VAR000535609

Page 2 of 11

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" means the MEMC facility located at 101 Edgewood Avenue, Altavista, Virginia.
7. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
8. "Hazardous Waste" or "HW" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
9. "MEMC" means Moore's Electrical & Mechanical Construction, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. MEMC is a "person" within the meaning of Va. Code § 10.1-1300.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent,".
12. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Virginia Waste Management Act" or "VWMA" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.
17. "VSQG" means a very small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-80-120(A).

SECTION C: Findings of Fact and Conclusions of Law

1. MEMC owns and operates the Facility at 101 Edgewood Avenue, Altavista, Virginia. MEMC has been assigned EPA ID Number VAR000535609 as a VSQG.
2. At the Facility, MEMC generates regulated wastes including used oil, used oil filters, waste tires, scrap metal and spent lead-acid batteries. Universal waste generated includes spent fluorescent lamps.
3. On November 20, 2019 Department staff inspected the Facility for compliance with the requirements of the VWMA and the Regulations. Based on the inspections and follow-up information, Department staff made the following observations.
4. At the time of the inspection, Department staff observed MEMC owns and operates two lamp crushing units. According to MEMC representatives, these units were purchased in 2018 and have been in use since that time. MEMC did not notify DEQ of its intent to crush lamps within 30 days of commencing the crushing operation. 9VAC20-60-1505.B.7(h), the generator or facility under the control of the generator shall make written notification to the department of the physical location of the crushing operation no later than January 31, 2017, for all existing operations or 30 calendar days prior to beginning operation of a new crushing operation.
5. According to MEMC staff, the lamp crushing units are transported between job sites for use. Staff stated that the units are typically stored on-site in between contracting jobs and then transported on company vehicles to job sites by MEMC employees. Staff also stated that once the crushing unit arrives on the job site, it is set up in a secure location and utilized by MEMC's employees until the job is completed. The unit and crushed lamps are then transported from the job site back to the Facility for management. 9VAC20-60-1505.B.2 prohibits the use of mobile crushing units. Mobile crushing units include any device or equipment or combination of devices and equipment that is designed to be transported and operated at more than one site.
6. At the time of the inspection, MEMC had temporarily installed one of the lamp crushing units in the Equipment Building at the Facility. MEMC staff stated that they were converting fluorescent lighting to LED lighting in on-site buildings and the lamp crushing unit was being used to crush the spent fluorescent lamps. The lamp crushing unit was positioned in a corner of the building and the ambient air from the area was not isolated from the remainder of the building. Additionally, the ambient air from the area was not filtered prior to discharge. 9VAC20-60-1505.B.7(b) requires that crushing operations shall occur in a space with its ambient air isolated from other work areas where persons who are not involved in the crushing operation may work. The ambient air from rooms containing crushing operations shall be discharged after filtration directly to an area outside the building where persons are unlikely to be directly exposed.

Consent Order

Moore's Electrical & Mechanical Construction, Inc.; EPA ID No. VAR000535609

Page 4 of 11

7. At the time of the inspection, two 55-gallon containers of crushed spent fluorescent lamps were accumulating in the Equipment Building. One 55-gallon container was attached to a lamp crushing unit noted in Paragraph 6, above, and the second 55-gallon container was closed and sitting next to the crushing unit. Neither container present was labeled as required. 9VAC20-60-1505.B.7(g) requires that drums or containers used for storage of crushed mercury-containing lamps shall be properly sealed and labeled. The label shall bear the words "universal waste-lamps," "waste lamps," or "used lamps." 40 CFR 273.14e requires that a small quantity handler of universal waste must clearly label or mark each lamp or a container or package in which such lamps are contained with one of the following phrases: "Universal Waste—Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)"
8. At the time of the inspection, MEMC staff were unable to provide a written procedure documenting how to safely crush, handle and store mercury-containing lamps, including during drum changes and malfunctions. 9VAC20-60-1505.B.7(i) requires a written procedure specifying how to safely crush, handle, and store mercury-containing lamps and how to minimize the release of mercury, including during drum changes and malfunctions, shall be developed, implemented, and documented.
9. According to MEMC staff, MEMC's Service Department is responsible for conducting maintenance activities on the lamp crushing units and MEMC staff were unable to provide documentation demonstrating maintenance activities for the two crushing units at the time of the inspection. 9VAC20-60-1505.B.7(b)(3) requires that maintenance of the filtration system shall be documented and records of maintenance shall be kept on site. 9VAC20-60-1505.B.7(j) requires that maintenance activities shall be documented and records of maintenance shall be maintained and available for inspection per subdivision 8 of this subsection which states in part a period of at least three years.
10. According to MEMC staff, service technicians and electricians are responsible for operating the lamp crushing units. MEMC staff stated that they believed initial training was provided to each operator prior to use, but that no annual refresher training is conducted and MEMC staff were unable to provide documentation demonstrating initial or annual training for use of the lamp crushing units as required in 9VAC20-60-1505.B.7(k).
11. MEMC staff stated that the number of spent fluorescent lamps crushed and the length of time the lamp crushing units are operated per month is job dependent. They do not keep documentation of how long each of the crushing units is operated per month or the number of lamps crushed per month. MEMC staff also stated that based on the size of certain jobs it is possible that the crushing units are operated for more than 2 hours per month and more than 220 pounds of bulbs are crushed per month. MEMC staff stated that no air sampling or emissions monitoring has been conducted. 9VAC20-60-1505.B.7(n)(1) requires that all generators or facilities under the control of the generator that crush mercury-containing lamps... shall provide monitoring as follows: (1) Ambient air within the lamp crushing room and exhaust air from the lamp crushing unit shall be tested for mercury during the first month of using the lamp crushing unit and whenever

Consent Order

Moore's Electrical & Mechanical Construction, Inc.; EPA ID No. VAR000535609

Page 5 of 11

the unit is modified or replaced, and annually thereafter and 9VAC20-60-1505.B.7(n)(4) requires that a facility shall document the amount of time spent crushing lamps and this information shall be maintained in the facility record and available for inspection per subdivision 8 of this subsection which states in part a period of at least three years.

12. According to MEMC staff, Air Cycle is contracted to pick-up containers of crushed lamps and recycle them as universal waste. At the time of the inspection, MEMC was unable to provide documentation of universal waste pick-ups or recycling. 9VAC20-60-1505.B.8 requires a copy of all records, notifications, certifications, and reports required by this section shall be kept on site and be available for examination by the department for a period of at least three years.
13. MEMC was unable to document the amount of time the crushed spent fluorescent lamps had been accumulating on-site. 40 CFR 273.15(c) requires that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.
14. On January 15, 2020, the Department issued NOV No. NOV-20-01-BRRO-001 to MEMC for the violations listed in paragraph C(4) through C(13) above.
15. Based on the results of the November 20, 2019 inspection, the Board concludes that MEMC has violated 9VAC20-60-1505.B.7(h), 9VAC20-60-1505.B.2, 9VAC20-60-1505.B.7(b), 9VAC20-60-1505.B.7(g), 40 CFR 273.14e, 9VAC20-60-1505.B.7(i), 9VAC20-60-1505.B.7(b)(3), 9VAC20-60-1505.B.7(j), 9VAC20-60-1505.B.7(k), 9VAC20-60-1505.B.7(n)(1), 9VAC20-60-1505.B.7(n)(4), 9VAC20-60-1505.B.8 and 40 CFR 273.15(c), as described in paragraph C(4) through C(13), above.
16. MEMC submitted documentation that verifies the violations described in paragraphs C(4) through C(13) above, have been corrected. Specifically, on 12/12/2019 MEMC decommissioned the two lamp crushing units and contracted with a local environmental firm to dispose of remaining universal waste.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code §10.1-1455 and upon consideration of Va. Code § 10.1-1186.2, the Board orders MEMC, and MEMC agrees:

1. To a civil charge of **\$27,020** in settlement of the violations cited in this Order, to be paid as follows:
 - a. MEMC shall pay **\$6,755** of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

MEMC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the County shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. MEMC shall satisfy \$20,265 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.
- c. The net project costs of the SEP to MEMC shall not be less than the amount set forth in Paragraph D.2.b. If it is, MEMC shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
- d. By signing this Order MEMC certifies that it has not commenced performance of the SEP.
- e. The MEMC acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by MEMC to a third party, shall not relieve MEMC of its responsibility to complete the SEP as described in this Order.
- f. In the event it publicizes the SEP or the SEP results, MEMC shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- g. The Department has the sole discretion to:
 - i. Authorize any alternate, equivalent SEP proposed by MEMC; and
 - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

Should the Department determine that MEMC has not completed the SEP, or alternate SEP, in a satisfactory manner; the Department shall so notify MEMC in writing. Within 30 days of being notified, MEMC shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of MEMC for good cause shown by MEMC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, MEMC admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. MEMC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. MEMC declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by MEMC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. MEMC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. MEMC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. MEMC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three

Consent Order

Moore's Electrical & Mechanical Construction, Inc.; EPA ID No. VAR000535609

Page 8 of 11

business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and MEMC.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after MEMC has completed all of the requirements of the Order;
 - b. MEMC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to MEMC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve MEMC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by MEMC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of MEMC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind

Consent Order

Moore's Electrical & Mechanical Construction, Inc.; EPA ID No. VAR000535609

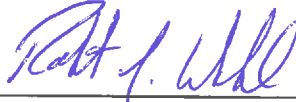
Page 9 of 11

MEMC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of MEMC.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, MEMC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18th day of March, 2022.



Robert J. Weld, Regional Director
Department of Environmental Quality

Moore's Electrical & Mechanical Construction, Inc. voluntarily agrees to the issuance of this Order.

Date: 2-8-2022 By: 
Mr. Andrew D. Moore, President
Moore's Electrical & Mechanical Construction, Inc.

State of VA
City/County of Camphell

The foregoing document was signed and acknowledged before me this 8th day of February, 2022, by Mr. Andrew D. Moore who is President of Moore's Electrical & Mechanical Construction, Inc., on behalf of the corporation.



Notary Public

7050488

Registration No.

My commission expires: 12/31/2022
Notary seal:



APPENDIX A
MOORE'S ELECTRICAL & MECHANICAL CONSTRUCTION, INC.
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In accordance with Va. Code § 10.1-1186.2, MEMC shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by MEMC is to provide the Town of Altavista ("the Town") monies for the completion of the Lynch Creek Erosion Stabilization Project. The objective of the restoration project is to reduce sediment load, improve water quality to better support aquatic life and enhance the impaired local ecosystem, targeting Lynch Creek near the YMCA and the War Memorial Park and sports complex in the Town.
 - The Town must obtain the necessary permitting prior to commencement of work (including but not limited to Erosion and Sediment Control and any necessary permits for streamwork).
 - The Town must have appropriate erosion and sediment controls implemented during disturbance activities, and develop and implement a final stabilization plan.
2. The SEP shall be completed by June 30, 2023.
3. MEMC shall submit invoices and payment documentation to the Department for verification, for remittance of the monies within 30 days of payment.
4. MEMC shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment within 30 days of the project completion date. For purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from the County's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
5. If the SEP has not or cannot be completed as described in the Order, MEMC shall notify DEQ in writing no later than 30 days of the determination. Such notification shall include:
 - a. an alternative SEP proposal, or
 - b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.

Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Consent Order

Moore's Electrical & Mechanical Construction, Inc.; EPA ID No. VAR000535609

Page 11 of 11

**Jerry Ford, Jr.
VA DEQ - Blue Ridge Regional Office
901 Russell Road
Salem, VA 24153
Phone: (540) 494-4231
E-mail: Jerry.Ford@deq.virginia.gov**